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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,653	10/03/2000	Peter Daniel Christian	A-58631-4/RFT/DJM	7496

7590

11/29/2001

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EXAMINER

BRUMBACK, BRENDA G

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.



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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

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DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents and Trademarks

Responsive to Communication Filed

11/13/01

The enclosed is a correct copy of a reference relating to the last Office action. The correction is indicated below.

THE PERIOD FOR RESPONSE OF 30 Days MONTHS SET IN SAID OFFICE ACTION IS  
RESTARTED TO BEGIN WITH THE DATE OF THIS LETTER.

☒ Part 1 - Correct Reference Citation

Re mail office action dated 3-23-01  
was mailed to wrong address

by

Examiner

☐ Part 2 - Correct Reference Furnished:

by

Reference Order Center

DONNA CHAPMAN  
SUPERVISORY, LEGAL  
INSTRUMENTS EXAMINER  
GROUP 1800

enc.

Art Unit: 1642

## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 15-23, drawn to isolated nucleic acid encoding capsid protein of an insect small RNA virus and an insecticidal protein, classified in class 536, subclass 23.72.
  - II. Claim 24 (and claim 15 to the extent that it reads on claim 24), drawn to a transgenic plant, classified in class 800, subclass 205.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful for recombinant production of proteins and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Brumback whose telephone number is (703) 306-3220. If the examiner can not be reached, inquiries can be directed to Supervisory Patent Examiner Anthony Caputa whose telephone number is (703) 308-3995. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone

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number is (703) 308-0196. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Examiner Brenda Brumback, Art Unit 1642 and should be marked "OFFICIAL" for entry into prosecution history or "DRAFT" for consideration by the examiner without entry. The Art Unit 1642 FAX telephone number is (703)-305-3014. FAX machines will be available to receive transmissions 24 hours a day. In compliance with 1096 OG 30, the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday or Federal Holiday with the District of Columbia, in which case the OFFICIAL date of receipt will be the next business day.

BB

March 28, 2001

*Brenda Brumback*  
Brenda Brumback,  
Patent Examiner